THE HON'BLE SRI JUSTICE P.S. NARAYANA

W.P.No.21941 of 2006

Date : 8-11-2006

Between:

P.Koteswara Rao s/o.Nagaiah .. Petitioner

and

The Ponnur Municipal Council
represented by its Chairperson,
Ponnur, Guntur District
and another .. Respondents

THE HON'BLE SRI JUSTICE P.S. NARAYANA

ORDER:

1. Heard Sri T.S.Venkata Ramana, Counsel representing the petitioners and Sri Nageswar Reddy, the learned Standing Counsel representing the respondents.

2. The Counsel for writ petitioner would maintain that inasmuch as the procedure contemplated by the provisions of the A.P. Municipalities Act 1965, hereinafter in short referred to as "Act" for the purpose of convenience, had not been followed, the impugned resolution to be held to be bad. The learned Counsel also placed strong reliance on the decision of this Court in W.P.No.26335/2003 dated 26-12-2003.

3. Per contra, Sri Nageswar Reddy, the learned Standing Counsel had taken this Court through the averments made in the counter affidavit filed on behalf of the 2nd respondent and also produced the attendance register and the original resolution before this Court. The Counsel also would contend that in the light of the facts and circumstances well explained, the procedure contemplated by the provisions of the Act in fact had been followed. The learned Counsel also would submit that this Court already expressed an opinion in this regard in W.P.No.18547/2006 dated 18-10-2006.

4. The Writ Petition is filed praying for a writ of mandamus declaring the action of 1st respondent in passing the impugned resolution No.216 dated 29-9-2006 as illegal, arbitrary, capricious, violative of Article 14 of the Constitution of India and consequently to declare the same as contrary to Section 51 of A.P. Municipalities Act 1965 and to pass such other suitable orders.

5. It is stated that the 2nd respondent-Municipality constituted by the Government consists of 31 Wards for which elections were conducted on 24-9-2005 for the post of Ward Member as well as Chairman. Out of 31 Wards, members belonging to Telugu Desam Party got 10 Wards,

members belonging to Indian National Congress Party got 20 Wards and Independent Member got one Ward. The 1st petitioner got elected as Ward Member for Ward No.17 from Telugu Desam Party. The 2nd petitioner got elected as Ward Member for Ward No.16 from Telugu Desam Party and the 3rd petitioner got elected as Ward Member from Ward No.20 for Telugu Desam Party. It is stated that all the petitioners are law abiding citizens and they are discharging their duties with utmost satisfaction and in consonance with the democratic principles contemplated under the Constitution of India as well as the A.P. Municipalities Act 1965. It is also further stated in para-4 of the counter affidavit filed in support of the Writ Petition that the Chairman convened General Body meeting on 29-9-2006 at about 11 a.m. in the Municipal Council hall for discussing about extending the water pipe line to Chintalapudi Gram Panchayat. As a matter of fact, the Municipality passed the Counsel Resolution No.122, dated 5-8-2004 and the 2nd respondent in his R.O.C.No.1024/04/E1 dated 16-8-2004 addressed letter to the Government for implementing the said letter and further to read the proceedings issued by the Commissioner and Director of Municipal Administration and Urban Development Department, Hyderabad in his letter R.O.C.No.15837/06 dated 21-8-2006. The Commissioner and Director, Hyderabad granted permission to extend the drinking water pipe line to Chintalapudi Gram Panchayat with some conditions. When the discussions were going on as per the agenda, some of the Ward Members belonging to Indian National Congress Party deviated the entire healthy discussion made on the subjects mentioned in the agenda. The Congress Councilors by name Mr.Y.Siva Ramakrishna, Yerasani Venkata Rao and co-option Member Magbul Baig raised severa objections with respect to providing drinking water to Chintalapudi Gram Panchayat despite the fact that the Government issued memo to provide drinking water to Chintalapudi Gram Panchayat

on conditions. Then the petitioners responded peacefully and expressed their opinion that once the Government itself had granted permission to provide water to the above said Gram Panchayat, the question of objecting the same in the present Council meeting is not proper and not tenable. It is also further averred in para-5 of the affidavit filed in support of the Writ Petition that in response to the said submission made by the petitioner, the abovesaid Ward Members belonging to Congress Party deviated the above said discussion and raised personal allegations against the petitioners and further in the said Council meeting they categorically asserted that as the Telugu Desam Government while it was in ruling had accepted the above said proposal of providing water to Chintalapudi Gram Panchayat, now we being the ruling party intend to reject the same and the above said opinion of the said Members was also reported even in the daily news paper such as Eenadu, Andhra Jyothi and Vartha on 30-9-2006. It is also further stated that during the above said discussion the Congress Ward Members who are having criminal background used muscle power to control the petitioners in participating in the healthy discussion and to divert the attention to the other unnecessary topics, they wilfully and intentionally deviated the above said discussion and unfortunately the 1st respondent adjourned item No.216 in the agenda and further suspended the petitioners for a period of three months contrary to the mandatory procedure contemplated under the A.P. Municipalities Act. The 1st respondent either issued prior notice or convened a meeting to that extent to discuss for suspending the Council Members belonging to Telugu Desam Party for a considerable long period of three months. In the instant case, the resolution does not indicate about the naming of the petitioners and put the same before the Council. Hence the resolution No.216 dated 29-9-2006 is not only illegal but also in utter violation of principles of natural justice as well as contrary to the provisions of A.P. Municipalities Act and as such the same

is null and void. It is also further stated in para-7 of the affidavit filed in support of the Writ Petition that the petitioners denied all the allegations made against them in the impugned resolution as the same have no substance and the said allegations are only created for the purpose of keeping the petitioners away from the meeting to see that no issues are raised with regard to the issues raised by the petitioner with respect to the illegalities committed by the Chair Person by producing false certificate with respect to release of pension under 'Indiramma Pathakam' and took away lakhs of rupees and thereby committed large scale scam. Further, when the petitioners raised the issue of land grabbings by the Congress Councilors where one of the Congress Councilors had grabbed land in part of the town worth about Rs.40,00,000/- meant for pubic purpose, the Congress Councilors had suddenly tried to attack the petitioners at that juncture while they were standing in defence position and due to their rash and sudden attack the benches had fallen fallen. It is also further stated that as the petitioners are raising issues with respect to the illegalities and irregularities committed by the Chair Person as well as Ward Members as mentioned above, to keep the petitioners away from the above said issue raised, the impugned order was passed in flagrant violation of principles of natural justice and contrary to the true spirit of Section 51 of A.P. Municipalities Act. Further, it is stated in para-8 of the affidavit that the impugned resolution issued by the 1st respondent is contrary to the true spirit of Section 51 of the A.P.Municipalities Act 1965 (hereinafter in short referred to as "Act" for the purpose of convenience) and is also arbitrary, illegal and violative of Article 14 of the Constitution of India. It is further submitted that the impugned resolution is passed by the 1st respondent tracing its power to Section 51 and sub-section (5) thereunder. It is also further stated in para-9 of the affidavit that having given anxious consideration to Section 51 of the Act, it is evident that a detailed procedure is prescribed for placing a Councilor under

suspension. The impugned order traces its powers to sub-section (5)(a) and (b) of Section 51 of A.P. Municipalities Act 1965 which empowers the Chairperson to name a member who disregards the authority of the chair or abuses the rules, bye-laws or regulations of the Council by persistently and wilfully obstructing the business thereof and under clause (b) of sub-section (5) of Section 51 it further empowers the Chairperson to put the question that the member be suspended from functioning in the Council for a period of not exceeding three consecutive months reckoned from the date of that meeting. However the 1st respondent while passing the impugned order had completely ignored sub-section (2) of sub-sections (2), (3) and (4) of Section 51 of the Act which are pre-requisites for an action to be initiated under sub-section (5)(a)(b) of Section 51 of the Act. It is also further stated that as is evident from the provisions stated supra, the procedure adopted by the 1st respondent in passing the resolution placing the petitioner under suspension is contrary to sub-sections (2), (3) and (4) of Section 51 of the Act, the procedure prescribed under those sub-sections being conditions precedent for exercising powers under sub-section (5)(a)(b). It is further submitted that sub-sections (3) and (4) prescribe that where the conduct of a Member in the opinion of the Chairperson is disorderly, he may direct that such member shall withdraw from the meeting of the Council and such members shall thereupon withdraw and shall not be allowed to attend for the remainder of the day's meeting and clause (b) of sub-section (3) prescribes that a Member who has been ordered to withdraw from the meeting under clause (a) of sub-section (3) continues to remain in the meeting, the Chairperson may take steps to cause him to be removed. Sub-section (4) of Section 51 of the Act empowers the Chairperson to suspend the meeting for a period of not exceeding three days if grave disorder arises in the meeting. It is stated in para-11 of the affidavit that the procedure laid down under sub-sections (3) and (4) of Section 51 of the Act are more in the nature of

affording an opportunity to the Member stated therein to correct himself and to co-operate with the other Members and as well as the Chairperson and sub-section (5) seems to be a penal provision which can be used or resorted to in a given situation where a Member who was afforded an opportunity under sub-sections (3) and (4) of Section 51 of the Act fails to correct himself. It is also further stated that by directly resorting to the procedure prescribed under sub-section (5)(a)(b) of Section 51 of the Act, the 1st respondent had violated the principles of natural justice and the right or an opportunity which is recognised under sub-sections (3) and (4) of Section 51 to a Member are violated and as such the impugned resolution passed by the 1st respondent is liable to be declared as violative of principles of natural justice and also liable to be struck down being contrary to the true intent of Section 51 of the Act. The action of the 1st respondent in resorting to the procedure under sub-section (5)(a) and (b) of Section 51 of the Act depriving the petitioners of an opportunity given to them under sub-sections (3) and (4) of Section 51 of the Act is arbitrary.

6. In the counter affidavit filed by the 2nd respondent-Commissioner of Ponnur Municipality, it was pleaded that on 29-9-2006 the General Body meeting of the Municipal Council took place at 11 A.M. in the Council Hall which was presided by the 1st respondent. The Council discussed general issues including the extension of water supply pipe line to Chinthalapudi Gram Panchayat as it had already passed a resolution under C.R.No.122 dated 5-8-2004 and forwarded to the Government under letter reference 1024/04/E1 dated 16-8-2004 and that was approved by the Commissioner, Hyderabad with some conditions under reference letter 15837/06/H dated 21-8-2006. It is further stated that the petitioners had started disturbing the smooth functioning of the Council and while Congress Councilors were giving some valuable suggestions, the petitioners came across them and

created unlawful atmosphere by making noise and shouting and threw the table interest Council Hall and behaved indecently and intentionally caused obstruction to the Council meeting by spoiling the valuable time of the respected Members and the 1st respondent-Chairperson and abused them in filthy language. At that stage in order to save the decency and decorum of the Council and out of responsibility being a representative of the public, the 1st respondent requested the petitioners to cool down and not to cause any obstruction to the smooth functioning. In spite of that request, the petitioners did not stop the violation and continued their unlawful behaviour. Then the 1st respondent-Chairperson ordered the petitioners to go out of the Council meeting. Then also the petitioners did not choose to care the 1st respondent and continued their attitude by not obeying the official orders. Having no other go and in spite of best efforts, the 1st respondent had suspended the petitioners for two months in the interests of public in general and Council in particular and as such everything was done as per the Act only. It is further stated that in order to save the valuable time of the Council, decency and the decorum the 1st respondent acted as per Section 51(3) of the Act and at last as per Section 51(5) of the Act. It is also stated that there are ten Telugu Desam Party Councilors including the petitioners and the M.L.A. being also from Telugu Desam Party the petitioners intentionally caused disturbance to the functioning of the Council on earlier occasion also with the underneath support of the M.L.A. The intention of the petitioners is to cause obstructions to the Council as the majority Councilors i.e., 20 in number, are even unable to function the Council smoothly. Thus there is neither intention on the part of the 1st respondent nor any personal interest. Though it is the discretionary power of the 1st respondent to act and respond to the occasion it became necessary to suspend the petitioners as per the Act

as there was no other option. Thus the act of the 1st respondent is legal and bona fide. It is also further stated in para-4 of the counter affidavit that some Members of the Indian National Congress deviated the healthy discussion and Mr.Y.Siva Rama Krishna, Yarasani Venkata Rao, co-option Member Magbul Baig raised severe objections and the petitioners responded peacefully and expressed their opinion and personal allegations made against the petitioners and there is criminal background and muscle power for Congress Ward Members and the 1st respondent intentionally suspended the petitioners contrary to the provisions under the Act and the resolution No.216 dated 29-9-2006 is illegal and in violation of principles of natural justice and the 1st respondent committed illegalities in 'Indiramma Pathakam scheme' and one Congress councilor grabbed land worth Rs.40,00,000/- and to keep the petitioners away from the Council the 1st respondent acted illegally, arbitrarily and in violation of Article 14 of the Constitution of India. The allegations in paras 9 to 14 of the affidavit filed in support of the Writ Petition had been denied as false and baseless and cooked up to have wrongful gain to the petitioners and wrongful loss to the Ponnur Municipality and the Council as well.

7. In the light of the specific stand taken by the 2nd respondent-Commissioner, Ponnur Municipality, and also in the light of the meeting register produced and also the original resolution produced before this Court, this Court is satisfied that the procedure as contemplated by Section 51 of the Act referred to supra had been followed. Strong reliance was placed on **K.Aga Reddy Vs. Uppal Kalan Municipal Council** (W.P.No.26355/2003, dated 26-12-2003) wherein a learned Judge of this Court came to the conclusion that the steps as specified under Section 51 of the Act had not been followed, but however in the light of the records produced before this Court, this Court is satisfied that

the impugned action is in accordance with the Act referred to supra. Hence, the Writ Petition being devoid of merit, the same shall stand dismissed. No costs.

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Justice P.S. Narayana

Date : 8-11-2006

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